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Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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[Redacted]

FILE:

Office: LOS ANGELES

Date: APR 06 2009

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant, [REDACTED] is a native and citizen of Korea who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain in the United States with his lawful permanent resident spouse and his parents, who are naturalized citizens of the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated July 31, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

On appeal, counsel notes that the Director, Los Angeles District Office found that the applicant is inadmissible under section 212(a)(6)(C) of the Act because the applicant presented false employment and tax-filing documentation in applying to change from B-2 to F-1 nonimmigrant visa classification. Counsel states that the director's denial letter dated December 9, 1999, conveys that the misrepresentation violated 8 C.F.R. § 214.1(f), not section 212(a)(6)(C) of the Act. Counsel contends that any misrepresentation made by the applicant in the application for change of status did not constitute fraud or misrepresentation under section 212(a)(6)(C) of the Act; his misrepresentation did not relate to a material fact and, at most, violated 8 C.F.R. § 214.1(f). Counsel contends that the applicant met the F-1 eligibility requirements; and in the F-1 context, the employment and tax-filing documentation filed in support of the change of status application are not material in determining F-1 eligibility and that the applicant did not receive a benefit under the Act and intended to study for approximately one year. Counsel contends that obtaining an F-1 visa is no more difficult than obtaining the B-2 visitor visa and an alien may obtain an F-1 visa without having any employment history or record of tax payments.

Counsel states that extreme hardship to the applicant's U.S. citizen children must be considered because the applicant is not inadmissible under section 212(a)(6)(C) of the Act, but, instead, has violated 8 C.F.R. § 214.1(f). Counsel indicates that hardship to the applicant's parents, especially his mother, was not considered by the director. He states that the applicant's parents have no meaningful ties to Korea, his parents would suffer economic hardship if medical care is not available in Korea, and relocating to Korea would separate them from their oldest son who lives in the United

States. He states that the applicant's parents are not eligible for medical and other retirement benefits in Korea because they are citizens of the United States. Counsel states that the applicant's spouse has been in the United States for ten years and has no meaningful ties to Korea and would have no employment prospects there.

The AAO finds counsel's assertion that the applicant is not inadmissible under section 212(a)(6)(C) of the Act unpersuasive. On December 19, 1997, the applicant filed Form I-539, Application to Extend/Change Nonimmigrant Status, to change from the B-2 to the F-1 classification. The director denied the application on April 23, 1998, and the applicant filed a motion to reopen or reconsider the denial. The director denied the motion after finding that, in response to the director's request that the applicant establish that he was to have a temporary stay in the United States, the applicant submitted false employment documents to show that he would return to his purported employment in Korea. The director found the applicant violated 8 C.F.R. § 214.1(f), which states, in part:

False information. A condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Act.

Counsel states that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because the director found he violated 8 C.F.R. § 214.1(f), not section 212(a)(6)(C) of the Act.

The director's determination to deny the applicant's motion and find him in violation of 8 C.F.R. § 214.1(f) relates to the applicant's request to change his nonimmigrant classification. In the current case, the director is making a separate determination in connection with the applicant's seeking a benefit under section 245 of the Act.

The applicant used false employment documents in order to file a motion to overcome the director's reasons in denying his change of status request. The false Verification of Employment and Certificate of Leave of Absence were used to demonstrate that the applicant intended to depart from the United States and return to Korea and show that he did not have a preconceived intent to study in the United States prior to admission as a nonimmigrant visitor. *See Letter by Former Counsel*, dated May 15, 1998.

The AAO finds that the applicant's use of false employment documents in order to procure an F-1 nonimmigrant classification constitutes a willful misrepresentation of a material fact within the meaning of section 212(a)(6)(C) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant who is the spouse, son, or daughter of a United

States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien . . .

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant's spouse, who is a lawful permanent resident of the United States, and his parents, who are naturalized citizens of the United States.

Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's qualifying relative must be established in the event that he or she remains in the United States without the applicant, and alternatively, if he or she joins him to live in Korea. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In support of the waiver application, the record contains, in addition to other documents, letters, birth certificates, a letter from a physician, financial records, and other documentation.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

In her statement, the applicant's spouse indicates that she has a close relationship with her husband and that he operates his own acupuncture clinic and is the principal bread-winner in their family.

In their statement, the applicant's parents convey that they immigrated to the United States in 1997 when they were 50 years old and that they have a close relationship with their two sons. They state that "[i]t is unimaginable and unthinkable that one of our sons could be separated from our family." The applicant, they convey, is the younger of their sons and their oldest son is single and in school. They state that they live with the applicant and care for his children while he and his wife are at work. They convey that they have constant physical pain for which the applicant gives them acupuncture treatments that they would not be able to afford elsewhere. They state that their oldest son is unable to assist them financially. The letter by [REDACTED] an internal medicine physician, states that since January 10, 1996, the applicant's mother has been his patient and that her medical problems are anxiety, depression, chest pain, headache, hypertension, and emotional stress due to her son's immigration problem, and that her symptoms will worsen if her son's immigration problem is not resolved.

Although the applicant's spouse indicates that her husband is the family's principal source of income, the record conveys that the applicant's spouse immigrated to the United States based upon her employment and the applicant is her derivative. The applicant's spouse's income, as shown in the employment letter dated December 9, 2004, by [REDACTED], was \$46,920 in December 2004. Thus, the record fails to show that the applicant is his family's principal source of income and his wife requires his income to meet household expenses. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant submitted no documentation to establish that he financially supports his parents. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

[REDACTED] an internist, states that he treats the applicant's mother for depression and anxiety and other problems; however, he does not describe with any detail how her condition relates to her son's immigration problem.

Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the Ninth Circuit has found that separating an applicant from his family members does not constitute extreme hardship. For example, *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991) deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). And in *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the Ninth Circuit upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051.

The applicant’s spouse and parents convey that they are anxious about separation from the applicant and his separation from his children. The AAO is mindful of and sympathetic to the emotional hardship, as expressed by the applicant’s spouse and parents, that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant’s spouse and parents, if they remain in the United States without him, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant’s husband, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

With regard to joining the applicant to live in Korea, no documentation has been submitted to show that the applicant’s parents are ineligible for medical and other retirement benefits in Korea because they are citizens of the United States, or that the applicant’s spouse would have no employment prospects there. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to the applicant’s spouse or mother or father if he or she were to remain in the United States without him, and alternatively, if they were to join him to live in Korea.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.